

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The amendments to claims 1 and 10 are supported at paragraphs [0032] to [0034].

The Office has rejected claims 1-14 under 35 U.S.C. 103(a) as being unpatentable over Drake et al. (R1), in view of Zhang et al. (R2) and JP 59082050 (R3).

R1 describes the manufacture of soy fortified yogurts containing 1-5% (w/w) soy protein. At the end of the article under 'Conclusions' the authors indicate that "[t]he ability of soy flavors to overpower fermented dairy flavors and chalky texture even at concentrations as low as 1% added soy protein concentrate, as seen in the present study, makes soy fortification of dairy foods a particular challenge... The fortification of dairy yogurts with small, but dietarily significant amounts of soy protein may provide an acceptable way to introduce additional soy protein to the American consumer."

R2 describes the incorporation of soy protein hydrolyzate in fermented milk. It is concluded that the hydrolyzate stimulates the growth of the bacteria and that it can be used not only as a nutrition reinforcer but that it "also plays an important role in the yogurt manufacturing."

The Office has attempted to substantiate the obviousness rejection as follows: "Given that increased fermentation times or lower final titratable acidities have been reported with soy-based yogurt, due to a lack of essential nutrients for the lactic acid bacteria (R1, page 1246, col. 2, first 4 lines) and dairy yogurts fortified with soy protein exhibit higher viscosities than control dairy yogurts (page 1246, col. 2, first paragraph),

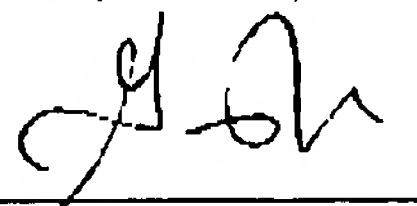
incorporation of some soy protein hydrolyzate to alleviate the viscosity and thickness problems brought about by unhydrolyzed soy protein would be obvious to those of ordinary skill in the art."

The Office's argumentation impermissibly uses the benefit of hindsight as it starts from the presumption that a person of ordinary skill in the art would have known at the time the invention was made that incorporation of soy protein hydrolyzate may alleviate viscosity and thickness problems brought about by unhydrolyzed soy protein. However, the Office points to nothing in the cited references to this effect. Furthermore, the Office's reasoning presumes that R1 indicates that there is a problem associated with the effect of soy protein hydrolyzate on viscosity and thickens. However, although R1 indicates that instrumental viscosity and sensory thickness increased with soy protein addition (see Abstract) and that addition of 5% (w/w) soy protein yields a significant viscosity increase (see Figure 1 on page 1246 of R1), the authors hold the view that the observed correlation between the concentration of soy protein concentrate and viscosity is caused by the fact that the protein concentration of the soy protein concentrate was higher than of the nonfat dried milk (see p. 1246, last full paragraph).

Since the Office points to no teaching of any special viscosity thickness problems associated with the use of unhydrolyzed soy protein, and since none of the cited references suggest that these problems, even if they had been known to exist, may be overcome by using unhydrolyzed soy protein instead of hydrolyzed soy protein, let alone by using a mixture of unhydrolyzed soy protein and hydrolyzed soy protein (40:60 to 95:5), the subject matter of the present claims are unobvious vis-à-vis the combined teachings of R1 and R2. As to R3, the Office points to nothing which supplies the above deficiencies.

In view of the foregoing, it is respectfully requested that the application, as amended,
be allowed.

Respectfully submitted,



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